

UNITED STATES DISTRICT COURT

for the

Western District of Pennsylvania

____ Division

Case No.

2:24 cv 1350
(to be filled in by the Clerk's Office)

DONALD SMITH

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

RECEIVED

SEP 27 2024

CLERK, U.S. DISTRICT COURT
FOR THE WESTERN DISTRICT
OF PENNSYLVANIA

SEE ATTACHED

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

(Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

UNKNOWN CITY OF BUTLER POLICE OFFICER #1

UNKNOWN CITY OF BUTLER POLICE OFFICER #2

UNKNOWN CITY OF BUTLER POLICE OFFICER (K-9 UNIT) #3

ALLEGHENY COUNTY DISTRICT ATTORNEY STEPHEN ZAPPALÀ

PITTSBURGH POLICE OFFICER SHEILA LADNER

PITTSBURGH POLICE OFFICER JOHN DENNIS

PITTSBURGH POLICE OFFICER ELVIS DURATOVIC

PITTSBURGH POLICE OFFICER JOSEPH NOVAKOWSKI

PITTSBURGH POLICE OFFICER SERATTI

PITTSBURGH POLICE OFFICER SONG

PITTSBURGH POLICE OFFICER BURDETTE

CITY OF PITTSBURGH MAYOR ED GATNEY

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name Donald Smith
All other names by which
you have been known: _____
ID Number 42105
Current Institution BUTLER COUNTY PRISON
Address 202 S. WASHINGTON ST
BUTLER PA 16001
City State Zip Code

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name UNKNOWN
Job or Title (*if known*) BUTLER POLICE OFFICER
Shield Number N/A
Employer BUTLER POLICE DEPARTMENT
Address _____
BUTLER PA 16001
City State Zip Code
☒ Individual capacity ☒ Official capacity

Defendant No. 2

Name UNKNOWN
Job or Title (*if known*) BUTLER POLICE OFFICER
Shield Number N/A
Employer BUTLER POLICE DEPARTMENT
Address _____
BUTLER PA 16001
City State Zip Code
☒ Individual capacity ☒ Official capacity

DEFENDANT NO. 5

SHEILA LADNER

PITTSBURGH POLICE OFFICER

CITY OF PITTSBURGH

✓ INDIVIDUAL CAPACITY ✓ OFFICIAL CAPACITY

DEFENDANT NO. 6

JOHN DENIS

PITTSBURGH POLICE OFFICER

CITY OF PITTSBURGH

✓ INDIVIDUAL CAPACITY ✓ OFFICIAL CAPACITY

DEFENDANT NO. 7

ELVIS DURATOVIC

PITTSBURGH POLICE OFFICER

CITY OF PITTSBURGH

✓ INDIVIDUAL CAPACITY ✓ OFFICIAL CAPACITY

DEFENDANT NO. 8

JOSEPH NOVAKOWSKI

PITTSBURGH POLICE OFFICER

CITY OF PITTSBURGH

✓ INDIVIDUAL CAPACITY ✓ OFFICIAL CAPACITY

DEFENDANT NO. 9

OFFICER SERGETTI

PITTSBURGH POLICE OFFICER

CITY OF PITTSBURGH

✓ INDIVIDUAL CAPACITY

✓ OFFICIAL CAPACITY

DEFENDANT NO. 10

OFFICER SONG

PITTSBURGH POLICE OFFICER

CITY OF PITTSBURGH

✓ INDIVIDUAL CAPACITY

✓ OFFICIAL CAPACITY

DEFENDANT NO. 11

OFFICER BURDETTE

PITTSBURGH POLICE OFFICER

CITY OF PITTSBURGH

✓ INDIVIDUAL CAPACITY

✓ OFFICIAL CAPACITY

DEFENDANT NO. 12

ED GAENEY

CITY OF PITTSBURGH MAYOR

CITY OF PITTSBURGH

✓ INDIVIDUAL CAPACITY

✓ OFFICIAL CAPACITY

Defendant No. 3

Name UNKNOWN
Job or Title (if known) BUTLER POLICE OFFICER K-9 UNIT
Shield Number N/A
Employer BUTLER POLICE DEPARTMENT
Address _____
BUTLER PA 16001
City State Zip Code
☒ Individual capacity ☒ Official capacity

Defendant No. 4

Name STEPHEN ZAPPALA
Job or Title (if known) DISTRICT ATTORNEY
Shield Number N/A
Employer ALLEGHENY COUNTY
Address _____
PITTSBURGH PA _____
City State Zip Code
☒ Individual capacity ☒ Official capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

- ☐ Federal officials (a *Bivens* claim)
☒ State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

FOURTH AMENDMENT
18 PA. CONS. STAT. § 313

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

CLAIM#1

IV. STATEMENT OF CLAIM

ON FEBRUARY 21, 2023 AS I WAS WALKING INTO THE HOLIDAY INN EXPRESS ON NORTH DUFFY ROAD IN BUTLER, PENNSYLVANIA I WAS IMMEDIATELY CUT OFF BY A CITY OF BUTLER POLICE VEHICLE.

TWO UNKNOWN CITY OF BUTLER POLICE OFFICERS GOT OUT AND ASKED IF THEY CAN SPEAK WITH ME AND THE INDIVIDUAL I WAS WITH, I TOLD THE OFFICERS I DID NOT WISH TO SPEAK WITH THEM AND TRIED TO WALK OFF BUT WAS STOPPED BY OFFICER#1.

I ASKED OFFICER#1 WHAT WAS HIS REASON FOR STOPPING ME, I WAS TOLD THAT SOMEONE CALLED ABOUT A VEHICLE SPEEDING IN THE HOTEL PARKING LOT. I EXPLAINED TO THE OFFICERS THAT IT TOOK US 5-10 SECONDS TO PARK AND EXIT THE VEHICLE SO IT'S IMPOSSIBLE ANYONE COULD HAVE CALLED THAT FAST ABOUT US SPEEDING.

THE OFFICER ASKED WHICH VEHICLE WE GOT OUT OF AND WHO WAS DRIVING? THE INDIVIDUAL I WAS WITH TOLD THEM HE WAS DRIVING AND POINTED TO THE VEHICLE.

UNKNOWN OFFICER#1 ASKED IF HE CAN PAT ME DOWN, I TOLD HIM NO. UNKNOWN OFFICER#1 TOLD ME THAT HE WAS GOING TO PAT ME DOWN ANYWAY FOR HIS PROTECTION AND PROCEEDED TO SEARCH ME WITHOUT MY CONSENT.

UNKNOWN OFFICER#1 GAVE MY WALLET TO UNKNOWN OFFICER#2 WHO RAN MY NAME FOR WARRANTS, UPON RETURNING UNKNOWN OFFICER#2 DREW HIS FIREARM AND ORDERED ME TO TURN AROUND AND PUT MY HANDS IN THE AIR AND HANDCUFFED ME.

UNKNOWN OFFICERS #1 AND #2 ASKED ME AND THE DRIVER FOR CONSENT TO SEARCH THE VEHICLE WE BOTH REFUSED.

UNKNOWN OFFICER #2 INFORMED ME AND THE DRIVER THAT HE WOULD HAVE A K-9 WALK AROUND THE VEHICLE AND THAT IF THE K-9 HITS ON ANYTHING THAT THEY WOULD SEARCH THE VEHICLE ANYWAY. UNKNOWN (K-9 UNIT) OFFICER #3 PULLED UP AND WALKED THE DOG AROUND THE VEHICLE ATLEAST TWENTY TIMES, THE DOG NEVER ALERTED ON ANYTHING, UNKNOWN OFFICERS #1 AND #2 PROCEEDED TO SEARCH THE VEHICLE ANYWAY. NOTHING WAS FOUND IN THE VEHICLE.

I WAS TOLD THAT I HAD AN OUTSTANDING WARRANT OUT OF WESTMORELAND COUNTY AND PLACED IN THE BACK OF A POLICE CAR. I WAS IN THE BACK OF THE POLICE CAR FOR APPROXIMATELY TWENTY(20) MINUTES BEFORE UNKNOWN OFFICER #2 TOLD ME THAT HE HAD TO RELEASE ME DUE TO THE FACT THAT WESTMORSLAND NEVER CONFIRMED THE WARRANT, WHICH I LATER FOUND OUT DISTRICT ATTORNEY STEPHEN ZAPPALA ORDERED THEM TO RELEASE ME.

I WAS UNCUFFED RELEASED AND FOLLOWED BY AN UNMARKED POLICE VEHICLE ALL THE WAY FROM BUTLER, PA BACK TO PITTSBURGH, PA.

CLAIM#2

IV STATEMENT OF CLAIM

FROM FEBRUARY 22, 2023 - MARCH 5, 2023 I WAS FOLLOWED EVERYDAY BY TWO UNMARKED PITTSBURGH POLICE VEHICLES, ONE EVEN SAT OUTSIDE A FRIENDS HOUSE I WAS A OVERNIGHT GUEST AT BEFORE.

FOR REASONS UNKNOWN, I WAS NEVER ARRESTED FOR A FUGITIVE WARRANT FEBRUARY 22, 2023 - MARCH 4, 2023 EVEN THOUGH THE PITTSBURGH POLICE FAU AND THE USMS FUGITIVE TASK FORCE HAD AMPLE OPPORTUNITY TO DO SO.

INSTEAD OF TAKING ME INTO CUSTODY ON THE NUMEROUS OCCASIONS AND/OR DAYS THAT THE POLICE OFFICERS ENCOUNTERED ME, DISTRICT ATTORNEY STEPHEN ZAPPALA AND THE PITTSBURGH POLICE FAU AND THE PITTSBURGH POLICE NARCOTICS AND VICE CAME UP WITH AN ELABORATE SCHEME TO ENTRAP ME WITH DRUGS IN ORDER TO GET ME INTO CUSTODY FOR A FUGITIVE WARRANT.

PITTSBURGH POLICE OFFICERS SHEILA LADNER AND JOHN DENIS ILLEGALLY OBTAINED A PHONE NUMBER THAT THEY BELIEVED BELONGED TO ME TO SET UP A DRUG DEAL USING A VERY CLOSE FRIEND OF MINE'S NAME.

ON MARCH 5, 2023 I WAS ARRESTED BY PITTSBURGH FAU, NARCOTICS AND VICE, AND USMS FUGITIVE TASK FORCE.

- D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

SEE ATTACHED

III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (check all that apply):

- ☒ Pretrial detainee
☐ Civilly committed detainee
☐ Immigration detainee
☐ Convicted and sentenced state prisoner
☐ Convicted and sentenced federal prisoner
☐ Other (explain) _____

IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.

FEBRUARY 21 - MARCH 5, 2023

BUTLER, PA AND PITTSBURGH, PA

- B. If the events giving rise to your claim arose in an institution, describe where and when they arose.

N/A

II BASIS FOR JURISDICTION

D. UNKNOWN CITY OF BUTLER OFFICERS #1, 2, AND 3 EACH ACTED UNDER COLOR OF LOCAL LAW WHEN THEY INVOKED POWER AND AUTHORITY OF THEIR OFFICE

PITTSBURGH POLICE OFFICERS SHEILA LADNER, JOHN DENIS, ELVIS DURATOVIC, JOSEPH NOVAKOWSKI, SERETTE, SONG, AND BURDETTS. EACH ACTED UNDER COLOR OF LOCAL LAW WHEN THEY INVOKED POWER AND AUTHORITY OF THEIR OFFICE

ALLEGHENY COUNTY DISTRICT ATTORNEY STEPHEN ZAPPALA ACTED UNDER COLOR OF COUNTY LAW WHEN HE INVOKED POWER AND AUTHORITY OF OFFICE

CITY OF PITTSBURGH MAYOR ED GAINSY ACTED UNDER COLOR OF LOCAL LAW WHEN HE INVOKED POWER AND AUTHORITY OF OFFICE.

C. What date and approximate time did the events giving rise to your claim(s) occur?

FEBRUARY 21, 2023 - 7:00 PM

FEBRUARY 22, 2023

D. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)

SEE ATTACHED

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

MENTAL AND EMOTIONAL INJURIES

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

(2) TWO MILLION DOLLARS FOR PUNITIVE DAMAGES

INJUNCTIVE RELIEF

VII. Exhaustion of Administrative Remedies Administrative Procedures

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

- ☐ Yes
☒ No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

N/A

B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

- ☐ Yes
☐ No
☐ Do not know

C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

- ☐ Yes
☐ No
☐ Do not know

If yes, which claim(s)?

N/A

- D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

☐ Yes

☐ No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

☐ Yes

☐ No

- E. If you did file a grievance:

1. Where did you file the grievance?

N/A

2. What did you claim in your grievance?

N/A

3. What was the result, if any?

N/A

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. *(Describe all efforts to appeal to the highest level of the grievance process.)*

N/A

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

N/A

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

N/A

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

N/A

(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)

VIII. Previous Lawsuits

The “three strikes rule” bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has “on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this “three strikes rule”?

☐ Yes

☒ No

If yes, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

- A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

☐ Yes

☒ No

- B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) _____

Defendant(s) _____

2. Court *(if federal court, name the district; if state court, name the county and State)*

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

☐ Yes

☐ No

If no, give the approximate date of disposition. _____

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

- C. Have you filed other lawsuits in state or federal court otherwise relating to the conditions of your imprisonment?

- ☐ Yes
☒ No

D. If your answer to C is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) _____

Defendant(s) _____

2. Court *(if federal court, name the district; if state court, name the county and State)*

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

☐ Yes

☐ No

If no, give the approximate date of disposition _____

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

IX. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 9-19-2024

Signature of Plaintiff

Printed Name of Plaintiff

Prison Identification #

Prison Address

Donald Smith

DONALD SMITH

42105

202 S. WASHINGTON STREET

BUTLER

City

PA

State

16001

Zip Code

B. For Attorneys

Date of signing: _____

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Address

City

State

Zip Code

Telephone Number

E-mail Address